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UNITED STATES DEPARTMENT*of***AGRICULTURE****WAR FOOD ADMINISTRATION***Office of Marketing Services***NOTICE OF REPORT AND OPPORTUNITY TO FILE EXCEPTIONS****NOTICE OF REPORT AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS ON PROPOSED AMENDMENTS TO THE ORDER (NO. 27), AS AMENDED, AND TO A PROPOSED MARKETING AGREEMENT, REGULATING THE HANDLING OF MILK IN THE NEW YORK METROPOLITAN MILK MARKETING AREA**

Pursuant to the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR, Cum. Supp., 900.1 *et seq.*), notice is hereby given of the filing of this report of the Director of Marketing Services with respect to proposed amendments to the order, as amended, and to a marketing agreement, regulating the handling of milk in the New York metropolitan milk marketing area, to be made effective under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 1940 *et seq.*). Interested parties may file exceptions to the report with the Hearing Clerk, Room 1331, United States Department of Agriculture, Washington 25, D. C., not later than the close of business of the 15th day after publication of this notice in the *Federal Register*. Exceptions should be filed in quadruplicate.

The proceeding was initiated by the Office of Distribution (now Office of Marketing Services) through the issuance on July 14, 1944 of a notice of hearing (9 F.R. 8099). Pursuant to such notice, the hearing was convened in New York City on August 15, 1944, and recessed on August 17, 1944. Thereafter, pursuant to notice issued on September 4, 1944 (9 F.R. 10940), the hearing was resumed on September 20, 1944 and, pursuant to a further notice issued on December 4, 1944 (9 F.R. 14351), was again resumed on December 20, 1944.

The proposed amendments as contained in the July 14, 1944 notice of hearing were prepared in the form in which they would appear in an amended order for the purpose of facilitating orderly consideration of a rather large number and variety of proposed amendments previously made by handlers and producers and which were incorporated or reflected in the notice of hearing. Pursuant to the notice of July 14, 1944, the August 15, 1944 hearing was open for the taking of evidence on amendments to virtually all provisions of the order, except the level of

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marketing area fluid milk and fluid cream prices; the definition of the marketing area; the location differentials; and cooperative payments. In order to provide further opportunity for handlers and producers to study the proposed amendments, and to prepare evidence after an explanatory statement presented at the hearing by a representative of the Dairy and Poultry Branch, the hearing was recessed on August 17 and was resumed on September 20, 1944.

The hearing as resumed on September 20, 1944 and as again resumed on December 20, 1944, however, was limited to a consideration of only a certain portion of the proposed amendments contained in the July 14, 1944 notice of hearing. The issues discussed in these resumed sessions of the hearing related to: (1) an allocation program to meet a shortage of fluid milk for the marketing area; (2) increasing the butterfat differential used in payments to producers; (3) determining which plants are to be included in the equalization pool and the reports of handlers and payments on milk received at non-pool plants; (4) the basis for the classification of milk, including methods and standards to be followed in determining the plant at which milk shall be classified, in accounting for milk, and in accounting for and classifying plant loss; and the issuance by the market administrator of rules and regulations incident to the accounting for and the classification of milk; (5) changes in class prices and class definitions for milk, the butterfat from which is used for evaporated milk, milk powder, malted milk powder, the frozen desserts or mix now in Class II-F and all products now classified and priced in Classes II-B and II-C; and (6) the inclusion in Class III of milk utilized in ice cream powder.

This report is concerned only with the foregoing issues. A report on other issues opened for consideration in the July 14, 1944 notice of hearing will be made only after further opportunity for hearing has been provided.

Explanation and Conclusions

1. *No provision should be included for allocation of milk between handlers. The hearing record does not clearly show the necessity for such a program, particularly in view of the prospect of correction, through other provisions, of the conditions which the allocation program was designed to correct.*
2. *The present flat rate of 4 cents per one tenth of one percent of butterfat used in paying producers should be changed to an average of the class price butterfat differentials weighted by the pounds of butterfat in each class, such differentials to be computed to the nearest even tenth of a cent. Such a change should result in a butterfat differential somewhat higher than the present differential and should be responsive to changes in the average market value of butterfat.*
3. *The method of determining pool plants, in reality a method of determining what farmers are to receive the fixed minimum prices, should be changed from the present method, which includes in the pool all plants approved by any health authority for the receiving of milk to be sold in the marketing area, to a method under which pool plants are those plants designated as such by the War Food*

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Administrator either on the basis of constituting a reserve supply of milk, or on a basis of actual shipment of fluid milk to the marketing area. The method of determining pool plants should be based on, and designed to give effect to, the basic principles, as reflected by the evidence in the record, that (1) there should be included in the pool all milk constituting the total supply produced for the marketing area, including that milk actually shipped to the market and also the necessary reserve supply; (2) handlers who receive equalization payments under the classified price and market-wide pooling system have an obligation to supply the market with fluid milk when needed; (3) under any method of determining pool plants the rights of handlers and producers must be adequately protected; and (4) the problem of determining pool plants is affected with economic considerations and that such consideration should be appraised in developing the proper solution.

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It is concluded that there is justification for the inclusion, at the beginning of such a change in the marketing program, of all of the plants currently included in the pool under the present order; but provision should be made for the subsequent inclusion of those plants which either constitute a reserve supply or actually ship fluid milk to the marketing area. The obligation of a handler who receives equalization payments to supply the market with milk should be recognized in a requirement that he keep his milk available for the market by maintaining strict sanitary control over his plant and the farms on which the milk is produced, and that he actually supply the market with milk in times of short supply. The rights of handlers should be protected by providing for the inclusion in the pool, on the basis of shipments, of any plant, regardless of location or previous connection with the market, and for designation as a pool plant, on a reserve basis, upon assumption by the operator of the plant of specified obligations as to the availability of his milk. No plant (except temporarily at the outset) should be classified as a pool plant, on the reserve plant basis, unless application is made by the handler; and the operator of any plant should have the right to withdraw that plant from the pool at any time during the months of April, May, June, and July, of any year. Certain minimum requirements should be established for supplying milk to the market, which, if met by the handler, would give him definite assurance of continued pool participation. Producers' interests should be protected by providing for notice to them by the handler prior to his withdrawal of a plant from the pool and by the market administrator prior to the suspension of a pool plant designation.

It is recommended that no broad discretionary authority should be given to the market administrator to suspend pool plant designations. The responsibility for final determination of such a question should be left with the War Food Administrator, and provision should be made for giving the handler an opportunity to be heard on whether he has met the requirements of a pool plant operator before final action is taken.

4. Associated with the pool plant provisions, there should be included a provision which would require handlers to pay into the equaliza-

tion pool for milk and certain milk products received at a plant, or delivered to a purchaser, in the marketing area, which milk was received from other than producer sources. Such a provision should specify the handler responsible for, and the amount of such payments. The amount of payment in each case should recognize the necessity of preventing extreme inequality in the cost of milk as between handlers with accompanying loss of market for producer's milk, and the ability of handlers to acquire full pool participation upon shipment to the marketing area of specified minimum quantities of milk.

5. The basis of classification should be changed to more specifically set forth the plant at which classification shall be determined. Provision should be made to extend, from 8 days to an entire month after the end of the month during which milk is received from farmers, the time allowed for establishing the classification of milk. The market administrator should be given authority to determine allowances for plant loss, not to exceed 5 percent of the butterfat in the product resulting from any specific plant operation; and such allowances should constitute a part of the rules and regulations to be issued by the market administrator. In addition, provision should be made which will authorize the formulation by the market administrator of the accounting procedure incident to the classification of milk, including conversion factors to be used in the absence of specific weights and tests, and definitions of products; and the principles governing the accounting procedure to be followed by the market administrator should be established.
6. A provision should be included which will specify the procedure to be followed by the market administrator in the issuance of rules and regulations incident to the classification of milk. Such procedure should provide for giving handlers an opportunity to participate in the formulation of rules and regulations and should require approval by the War Food Administrator of all rules and regulations so issued. In order to provide for necessary rules and regulations between the effective date of such proposed amendments and the effective date of the first rules and regulations issued pursuant to the specified procedure, the issuance of temporary rules and regulations should be authorized. Provision should also be made for the issuance of such temporary rules and regulations upon a finding by the War Food Administrator that the absence of a rule during the time required to follow the specified procedure would constitute an emergency.
7. The evidence in the record does not justify a change at this time in the price of milk utilized in evaporated milk, milk powder, or malted milk powder, or in the price of milk utilized in Classes II-C and II-F.
8. The Class II-B price should be reduced 13 cents during the months of August through February and 18 cents during the months of March through July, in order to be more nearly competitive with other ice cream prices and to provide adequate seasonal variation to permit necessary storage of cream during the flush season for

use during the short season. Provision should be made in the formula for a minimum Class II-B price of not less than the Class II-C price or the Class II-D price less 5.5 cents, in order to avoid a Class II-B price lower than competitive cream prices.

9. The Class II-B, Class II-D, Class II-E, and Class II-F definitions should be revised to provide for the classification, and consequently the pricing, of milk utilized in plain condensed milk, on the same basis as milk utilized in ice cream.
10. The Class III definition should be changed so as to include ice cream powder.
11. The definition of Class I milk should be changed (1) by substituting therefor, without change in effect, definitions of Classes I-A, I-B, and I-C milk, with related changes in the pricing provisions for Class I milk, in order to facilitate reference to the three price categories of Class I milk as now defined; and (2) by deletion of that portion of the definition which relates to the handling of plant loss.
12. The definitions of "producer" and "handler" should be revised, and new definitions of "dairy farmer," "plant," and "pool plant," should be included, all in recognition of the recommended pool plant amendment.
13. The provision providing for reports by handlers should specifically indicate those handlers required to submit regular monthly reports, those handlers from which other reports may be required by the market administrator, and the information to be contained in such reports.
14. Provision should be made for the inclusion in the computation of the uniform price of payments on milk received from other than producer sources.
15. For the purpose of preserving the proper correlation of the various provisions of the order, other necessary changes should be made throughout the order to effectuate the changes recommended.

Proposed Amendments

The following amendments are set forth as the detailed means by which the foregoing recommended changes may be carried out. A proposed marketing agreement is not included in this report because the recommended provisions thereof would be the same as the provisions in the order, as amended and as recommended to be amended.

I. Amend Sec. 927.1 as follows:

1. Amend paragraph (b) to read:
 "(b) 'Secretary' means the Secretary of Agriculture, or the War Food Administrator, or any officer or employee of the United States who is, or who may hereafter be, authorized to exercise the powers and to perform the duties of the Secretary of Agriculture."
2. Add new paragraph (e) to read:
 "(e) 'Dairy farmer' means any person who produces milk."

3. Change paragraph (e) to (f) and amend to read:
“(f) ‘Producer’ means any dairy farmer whose milk is delivered direct from farm to a pool plant.”
4. Change paragraph (f) to (g) and amend to read:
“(g) ‘Handler’ means (1) any person who engages in the handling of milk, or products therefrom, which milk was received at a pool plant, or at a plant approved by any health authority as a source of milk for the marketing area, (2) any person who engages in the handling of milk, cultured or flavored milk drinks, cream, or skim milk, all or a portion of which is shipped to, or received in, the marketing area, or (3) any cooperative association of dairy farmers with respect to any milk which it causes to be delivered for its own account direct from farms to a plant of any other handler at which plant the handling of milk is subject to regulation hereunder.”
5. Renumber paragraphs (g), (h), and (i) as paragraphs (k), (l), and (m), respectively, and add new paragraphs (h) and (j) as follows:
“(h) ‘Plant’ means the land, buildings, surroundings, facilities, and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, handling, or processing of milk or milk products as determined by the market administrator pursuant to Sec. 927.2(d)(10).”
“(j) ‘Pool plant’ means any plant which is designated as a pool plant pursuant to Sec. 927.3.”

II. Amend Sec. 927.2 as follows:

1. Change paragraph (c) to read:
“(c) *Powers*. The market administrator shall have the following powers:
(1) To administer the terms and provisions hereof;
(2) To make rules and regulations to effectuate the terms and provisions hereof; and
(3) To receive, investigate, and report to the Secretary complaints of violations of this order.”
2. Change subparagraph (d) (5) by changing the first section reference from “927.5(a)” to “927.6” and the second section reference from “927.7” to “927.8.”
3. Change subparagraph (d) (8) by changing the section reference from “927.8” to “927.9.”
4. Change subparagraph (e) (1) by changing the words “Class I” to “Class I-A,” and the section reference from “927.4(a)” to “927.5(a).”
5. Change subparagraph (e) (2) to read: “(2) Not later than the 5th day of each month, the prices for all other classes, pursuant to 927.5(a), and the differentials, pursuant to 927.5(b) and 927.7(c), in effect for the preceding month; and.”
6. Change subparagraph (e) (3) by changing the section reference from “927.6(b)” to 927.7(b).”

III. Add a new Sec. 927.3 as follows:

"Sec. 927.3 *Pool plants*. A plant shall be designed as a pool plant pursuant to either (a) or (b) of this section.

(a) *Reserve plants*. (1) *Carryover designation*. Any plant for which the report of milk received from dairy farmers was used in the computation of the uniform price for November 1944 is hereby designated as a pool plant from the effective date hereof until such designation is cancelled pursuant to (4) of this paragraph.

(2) *Designation upon application* (i) *Eligible applicants*. Any person who operates a plant which is located in New York State, Vermont, Massachusetts, Connecticut, New Jersey, or Pennsylvania and which is either approved as a source of milk by a health authority in the marketing area at the time of application and under the sanitary supervision of such authority, or was a pool plant during the preceding October, November, and December, may apply to the Secretary prior to July 1 of any year to have such plant designated as a pool plant: *Provided*, That if milk is delivered at such plant by dairy farmers for the account of a cooperative association which does not operate the plant, an application must be made by such cooperative association as well as by the person operating the plant. Applications shall be filed at the office of the market administrator.

(ii) *Designation*. Any plant for which an application has been made pursuant to (i) hereof shall be designated as a pool plant upon determination by the Secretary that the requirements of (3) of this paragraph have been met. Such designation shall be effective as of August 1 following the date of application and until cancelled pursuant to (4) of this paragraph.

If, based upon the information contained in an application pursuant to (i) hereof, the Secretary determines that the requirements of (3) of this paragraph have not been met, the applicant or applicants shall be so notified. Within 15 days after receipt of such notice, the applicant or applicants may submit additional information and request further consideration.

In the event that the Secretary makes no determination prior to August 1 following the date of application, the application may, prior to September 1, be withdrawn by written request of the applicant or applicants. If the application is not so withdrawn, the plant shall be treated as a pool plant as of August 1: *Provided*, That all payments into or out of the producer-settlement fund (except such payments which are made on the basis of operations during a month in which the plant meets the requirements of (b) of this section) shall be held in reserve by the market administrator until a determination is made.

(3) *Requirements*. In order to qualify as a pool plant pursuant to this paragraph, the person operating the plant shall meet each of the following requirements: (i) be willing to ship to the marketing area milk received at the plant from dairy farmers; (ii) keep such control over the sanitary conditions under which milk received at the plant is produced and handled that the plant can

meet the requirements of a source of milk for the marketing area, except that a temporary infraction, for a period of not more than 15 days, of the sanitary regulations governing the shipment of milk into the marketing area shall not constitute failure to meet this requirement; (iii) have no commitments for disposition of milk that prevent him from shipping to the marketing area all milk received from dairy farmers at the plant.

(4) *Suspension and cancellation of designation.* The designation of a pool plant pursuant to this paragraph may be suspended or cancelled under any of the following provisions: (i) the designation shall be cancelled upon application to the market administrator by the handler operating the plant effective at any time during the months of April through July of any year but not sooner than 30 days after receipt of such application: *Provided*, That such applications for cancellation shall be accompanied by proof that the handler, if not a cooperative association qualified pursuant to Sec. 927.8(d), has notified producers delivering to such plant, either individually or through the qualified cooperative association of which they are members, of his intention to make such application: *Provided further*, That if milk is received at the plant from producers for the account of a cooperative association which does not operate the plant, an application must be made by such cooperative association as well as by the handler operating the plant; (ii) the designation of any plant which on June 15 of any year is not approved by a health authority as a source of milk for the marketing area shall be automatically cancelled effective on August 1 of such year unless the absence of such approval is a temporary condition covering a period of not more than 15 days. This provision does not prevent a handler from applying, pursuant to (2) of this paragraph, for a new designation effective on August 1 of the same year; (iii) the designation of any plant shall be suspended, effective no sooner than 10 days nor later than 20 days after notice to the handler by registered mail, whenever the market administrator subject to the limitations set forth in (iv) hereof finds on the basis of available information that the handler operating the plant is not meeting the requirements set forth in (3) of this paragraph: *Provided*, That if the handler operating the plant is not a cooperative association qualified pursuant to Sec. 927.8(d) the market administrator shall also notify producers delivering to such plant, either individually or through the qualified cooperative association of which they are members, of such suspension of designation.

Not later than 30 days after the effective date of suspension of designation pursuant to this subparagraph the handler operating the plant may apply to the Secretary for a review. If the handler fails to so apply for such review, the designation of the plant as a pool plant shall be cancelled as of the effective date of the suspension. If the handler does so apply, the Secretary shall, after review, either determine that the requirements pursuant to (3) of this paragraph have not been met and order the designation cancelled as of the effective date of the suspension,

or, determine that such requirements have been met and order the suspension revoked.

Beginning with the effective date of a suspension pursuant to this subparagraph and until the Secretary has either ordered the designation cancelled or ordered the suspension revoked, the plant shall be treated as a pool plant: *Provided*, That all payments into or out of the producer-settlement fund (except such payments on the basis of operations during a month in which the plant meets the requirements of (b) of this section) shall be held in reserve by the market administrator until an order is issued by the Secretary; (iv) suspension for failure to meet the requirements of (3) (i) of this paragraph shall be made effective only as of a date in the months of August through December, or during a month for which the Secretary has declared an emergency to exist in the supplying of milk to the marketing area.

No pool plant designation shall be cancelled for failure to meet the requirements of (3) (i) of this paragraph if the handler operating the plant utilized at least 75 percent of the milk he received from producers at all pool plants, during the month in which the suspension by the market administrator was made effective, in Classes I-A, II-A, II-B (except cold storage cream) and I-C ultimately distributed in the special cream area, Pennsylvania, or Fairfield County, Connecticut: *Provided*, That the quantity of such Class I-C milk to be used in computing such percentage utilization shall not exceed 50 percent of the milk received by the handler from producers. The percentage requirement for the utilization of milk in the above listed classes for any month for which the Secretary has found and declared that an emergency exists in the supplying of fluid milk to the marketing area shall be established by the Secretary.

Cancellation of designations for failure to meet the requirements of (3) (i) of this paragraph shall be limited to those plants of a handler necessary to result in a utilization of milk received at the remaining pool plants operated by such handler in Classes I-A, I-C, II-A, and II-B equal to the percentage herein provided.

Loss of approval by health authorities of a plant as a source of milk for the marketing area shall not in itself constitute adequate reason for the market administrator to suspend the designation of a plant for failure to meet the requirements of (3) (ii) of this paragraph unless the absence of such approval continues for more than 15 days.

No pool plant designation may be suspended by the market administrator prior to August 1, 1945, except for failure of the handler operating the plant to meet the requirements of (3) (ii) of this paragraph.

(5) *Plant replacements.* In addition to designations pursuant to (2) of this paragraph, a plant may be designated at any time as a pool plant upon application made by the person operating the plant to the Secretary showing that the plant is a replacement for one or more pool plants operated by him and that substantially all of the dairy farmers delivering milk at the plant

previously delivered milk to the pool plant or plants replaced. Upon designation of a plant pursuant to this subparagraph the designation of the plant or plants which is replaced shall be automatically cancelled.

(6) *Change of operator.* The designation of pool plants pursuant to this paragraph shall be considered as applicable to the plant as such, and subject to cancellation only pursuant to (4) and (5) of this paragraph, regardless of change in the person owning or operating the plant.

(b) *Plants shipping Class I-A milk to the marketing area.* For any month a plant from which during such month Class I-A milk is sold or distributed in or shipped to, either directly or through other plants, the marketing area, which quantity of milk during the months of July through March, is equal to more than 25 percent of the milk received directly from dairy farmers, or during the months of April through June is equal to more than 10 percent of the milk received directly from dairy farmers, shall be a pool plant: *Provided*, That for the months of April through June, no plant shall be a pool plant on this basis unless such plant met the requirements of a pool plant on this basis in each of the months of October, November, and December of the preceding year."

IV. Amend Sec. 927.3 as follows:

1. Change the section from "927.3" to "927.4" and amend the section heading and paragraph (a) thereof to read:

"Sec. 927.4 *Classification.* (a) *Basis of classification.* All milk, the classification of which is necessary to establish the classification of milk received from producers, and all milk entering the marketing area as milk, skim milk, cultured or flavored milk drinks, or cream, shall be classified in accordance with the form in which it is held at, or moved from, the plant at which classification is determined. Such classification shall be subject to the following conditions:

(1) *Burden of proof.* In establishing the classification of milk received from producers the burden rests upon the handler who received such milk from producers to show that such milk should not be classified as Class I-A, and having established the manufacture of cream, the burden rests upon such handler to show that the milk the butterfat from which was manufactured into cream should not be classified as Class II-A, and that the skim milk resulting from the manufacture of cream, should not be classified as Class V-A. The burden rests upon the handler who receives or distributes in the marketing area, milk, skim milk, cultured or flavored milk drinks, or cream, to establish the source of all of his milk or milk products.

(2) *Period for establishing classification.* A period ending with the last day of the month following the month during which milk was received from dairy farmers shall be allowed for handling such milk as a basis for establishing the classification as other than Class I-A.

(3) *Plant at which classification is to be determined.* Classification shall be determined at the plant where the milk is received from dairy farmers: *Provided*, That such milk shipped from such plant in the form of milk, skim milk, cream, or plain condensed milk, shall be classified at the plant or plants to which it is shipped, subject to the following limitations: (i) if the shipment is to a plant in the marketing area, milk shipped in the form of milk shall be classified as Class I-A; milk the butterfat from which is shipped in the form of cream shall be classified as Class II-A, and in the form of plain condensed milk as Class II-B unless such cream or plain condensed milk leaves the plant where first received in the marketing area in the form of frozen desserts or homogenized mixtures in which case the milk shall be classified in the appropriate class or classes for milk utilized in frozen desserts or homogenized mixtures; and skim milk shipped in the form of skim milk shall be classified as Class V-A; (ii) except as provided in (iii), (iv), (v), and (vi) of this paragraph, milk, skim milk, or milk the butterfat from which is shipped to a non-pool plant, shall be classified in accordance with the form in which it is held at or moved from such non-pool plant. If butterfat which is shipped as milk to a non-pool plant leaves such plant in the form of cream or plain condensed milk, the milk shall be classified in accordance with the form in which the cream or plain condensed milk is held at or moved from the plant to which it is shipped, except as provided in (iii), (v), and (vi) of this paragraph; (iii) if the shipment is to a plant at which the handling of milk is regulated by another order issued pursuant to the act, the milk or the milk the butterfat from which is so shipped, and which is not classified as Classes I-A, I-B, I-C, II-A, II-B, or II-C shall be classified as Class II-E if the marketing area pursuant to such order is in New England, and shall be classified as Class II-D if such marketing area is outside New England; (iv) if the shipment is in the form of milk shipped more than 65 miles from the plant where received from dairy farmers, to a plant outside New York State, Vermont, New Jersey, or Pennsylvania, it shall be classified as Classes I-A, I-B, or I-C; (v) if the shipment is of cream or plain condensed milk shipped more than 65 miles from the plant where the milk was separated or condensed, to a plant in Maine, New Hampshire, Massachusetts, Rhode Island, or Connecticut, the milk the butterfat from which is so shipped shall be classified as Class II-E unless the cream or plain condensed milk is subsequently moved into the special cream area or the marketing area. This provision shall not apply to milk received from dairy farmers during April, May, and June; (vi) if the shipment is of cream or plain condensed milk shipped more than 65 miles from the plant where the milk was separated or condensed, to a plant outside New England, New York State, New Jersey, or Pennsylvania, the milk the butterfat from which is so shipped shall be classified

as Class II-D unless the cream or plain condensed milk is subsequently moved into the special cream area or the marketing area. This provision shall not apply to shipments to plants in Ohio, Maryland, or Delaware of milk received from dairy farmers during April, May, and June.

(4) *Plant loss.* Allowances for plant loss, not to exceed 5 percent of the butterfat in the product resulting from any specific plant operation, which plant loss may be classified the same as the milk equivalent of the butterfat in the product, shall be determined by the market administrator pursuant to (b) of this section.

(5) *Accounting procedure.* The accounting procedure for classifying milk pursuant to this section, including the conversion factors to be used in the absence of specific weights and tests, and the specific definitions of products included in each class, shall be set up by the market administrator pursuant to (b) of this section. Such accounting procedure shall be in accordance with the following general principles: (i) milk, cream, or skim milk received from pool plants or from producers shall be assigned as far as possible to Class I-A, Class II-A, or Class V-A, unless such classification is based on some product leaving or on hand at the plant in some form other than milk, cream, skim milk, or other than cultured or flavored milk drinks shipped to or distributed in the marketing area; (ii) if milk, cream, plain condensed milk, or skim milk is received at a plant from producers or from pool plants and in like form from dairy farmers not producers or from non-pool plants, the total milk equivalent of such products from producers and pool plants, and the total milk or milk equivalent from dairy farmers not producers and non-pool plants shall be assigned prorata to the total classification of all such milk or milk equivalent after the assignment in accordance with (i) of this subparagraph; (iii) the milk received from producers which is eliminated from the computation of the handler's net pool obligation pursuant to Sec. 927.7 shall be assigned prorata to the total classification of all milk from producers and pool plants."

2. Add a new paragraph (b) as follows:

"(b) *Rules and regulations.* Rules and regulations to effectuate the terms and provisions of this section shall be made, and may from time to time be amended by the market administrator in accordance with the procedure set forth in this paragraph: *Provided*, That prior to the effective date of the first rules or regulations issued hereunder, and at any later time upon a determination by the Secretary that an emergency exists which requires the immediate adoption of a rule or regulation, the market administrator may issue, with the approval of the Secretary, a temporary rule or regulation without regard to the following procedure. Such temporary rule or regulation shall remain in effect only until the effective date of a rule or regula-

tion issued pursuant to the procedure herein set forth replacing such temporary rule or regulation.

(1) All proposed rules and regulations and amendments thereto shall be the subject of a meeting called by the market administrator, at which time all interested persons shall have opportunity to be heard. Notice of such meeting, including a copy of the proposed rule or regulation, shall be sent at least five days prior to the date of the meeting to all handlers operating pool plants. A stenographic record shall be made at all such meetings and such record shall be public information available for inspection at the office of the market administrator.

(2) A period of at least five days after the meeting pursuant to (1) shall be allowed for the filing of briefs. Such briefs shall be public information available for inspection at the office of the market administrator.

(3) Not later than 30 days after a meeting pursuant to (1) the market administrator shall issue and send to all handlers operating pool plants the tentative rules or regulations or amendments thereto relating to the issues considered at such meeting, or a tentative notice that no rule or regulation or amendment thereto is to be issued prior to further consideration at another meeting. The tentative rules or regulations, or tentative notice, together with copies of the stenographic record and briefs, shall also at the same time be forwarded by the market administrator to the Secretary.

(4) The tentative rules or regulations and amendments thereto or tentative notice issued pursuant to (3) shall be final when approved by the Secretary and shall be effective as of the first of the month following such approval but not sooner than 10 days after issuance by the market administrator: *Provided*, That in the event that no action is taken by the Secretary the tentative rules or regulations and amendments thereto, or tentative notice issued by the market administrator shall be considered as approved by the Secretary 30 days after such issuance."

3. Change paragraph "(b)" to "(c)" and in the first sentence of such paragraph change the words "paragraph (a)" to "(a) and (b)."

4. Delete subparagraph (c)(1) and add in lieu thereof the following:

"(1) Class I-A milk shall be all milk, except as provided in (2) and (3) hereof, which leaves a plant as milk, or cultured or flavored milk drinks containing 3.0 percent butterfat or more, and all milk the classification of which is not established in some other class named in this paragraph.

(2) Class I-B milk shall be all milk which leaves a plant as milk, or cultured or flavored milk drinks containing 3.0 percent butterfat or more, which has not passed through the

marketing area, but which is ultimately distributed in an area regulated by another order of the Secretary.

(3) Class I-C milk shall be all milk which leaves a plant as milk, or cultured or flavored milk drinks containing 3.0 percent butterfat or more, which has not passed through the marketing area, but including milk which was received directly from producers at a plant in the marketing area, and which is ultimately distributed in an area not regulated by an order of the Secretary."

5. Change the number of subparagraph (c) "(2)" to "(4)."
6. Change the number of subparagraph (c) "(3)" to "(5)."
Change the section reference in such subparagraph from "927.7(j)" to "927.8(j)," and amend that part of such subparagraph preceding the first semicolon to read:
"(5) Class II-B milk shall be all milk, except as set forth in (7), (8) and (9) of this paragraph, the butterfat from which leaves or is on hand at a plant in the form of plain condensed milk, frozen desserts or homogenized mixtures."
7. Change the number of subparagraph (c) "(4)" to "(6)."
8. Change the number of subparagraph (c) "(5)" to "(7)" and amend such subparagraph to include certain plain condensed milk by changing the subparagraph to read:
"(7) Class II-D milk shall be all milk the butterfat from which leaves or is on hand at a plant in the form of cream or in the form of plain condensed milk or in the form of frozen desserts or in the form of homogenized mixtures used in frozen desserts, which is delivered to a plant or a purchaser outside the marketing area, outside the special cream area and outside New England: *Provided*, That the cream or the plain condensed milk is not moved to a plant in the marketing area, in the special cream area, or in New England, or delivered to a purchaser in the marketing area, in the special cream area, or in New England: *Provided further*, That the frozen desserts, or the homogenized mixtures used in frozen desserts are not moved to a plant in New York City, or delivered to a purchaser in New York City."
9. Change the number of subparagraph (c) "(6)" to "(8)" and amend such subparagraph to include certain plain condensed milk by changing the subparagraph to read:
"(8) Class II-E milk shall be all milk the butterfat from which leaves or is on hand at a plant in the form of cream or in the form of plain condensed milk or in the form of frozen desserts or in the form of homogenized mixtures used in frozen desserts, which is delivered to a plant or a purchaser in New England: *Provided*, That the cream or the plain condensed milk is not moved to a plant outside New England or delivered to a purchaser outside New England: *Provided further*, That the frozen desserts or homogenized mixtures used in frozen

desserts are not moved to a plant in New York City, or delivered to a purchaser in New York City."

10. Change the number of subparagraph (c)“(7)” to “(9)” and amend such subparagraph to include certain plain condensed milk by changing the subparagraph to read:

“(9) Class II-F milk shall be all milk the butterfat from which leaves or is on hand at a plant in the form of plain condensed milk which is delivered to a plant or a purchaser in the special cream area, is not moved as plain condensed milk to a plant in the marketing area or delivered to a purchaser in the marketing area, and the classification of which is not established in some other class; or all milk the butterfat from which leaves or is on hand at a plant in the form of frozen desserts or in the form of homogenized mixtures used in frozen desserts, except as set forth in subparagraphs (7) and (8) of this paragraph, provided the frozen desserts in both instances were moved to a plant or delivered to a purchaser outside New York City and remained outside New York City; or all milk the butterfat from which leaves or is on hand at a plant in the form of cream cheese.”

11. Change the number of subparagraph (c)“(8)” to “(10)”; change the subparagraph references therein from “(7) and (10)” to “(9) and (12),” respectively, and add therein the words “ice cream powder” immediately after the words “malted milk powder.”
12. Change the number of subparagraphs (c)“(9)” and “(10)” to “(11)” and “(12),” respectively.
13. Change the number of subparagraph (c)“(11)” to “(13)” and change the subparagraph reference numbers therein from “(2),” “(3),” “(4),” “(5),” “(6),” “(7),” “(9),” and “(12)” to “(4),” “(5),” “(6),” “(7),” “(8),” “(9),” “(11),” and “(14).”
14. Change the number of subparagraph (c)“(12)” to “(14)” and change the subparagraph reference numbers therein from “(2),” “(3),” “(4),” “(5),” “(6),” “(7),” “(9),” and “(11)” to “(4),” “(5),” “(6),” “(7),” “(8),” “(9),” “(11),” and “(13).”

V. Amend Sec. 927.4 as follows:

1. Change the section number from “927.4” to “927.5.”
2. Amend the second paragraph in the section to read: “The prices for milk classified pursuant to (4), (5), (6), (7), (8), (9), and (11) of Sec. 927.4(c) shall represent the value of the 40 percent cream equivalent of the milk. The value of any excess skim milk in such milk shall be represented by either the Class V-A or the Class V-B price.”
3. Amend that part of subparagraph (a) (1) preceding the table to read: “(1) For Class I-A milk the price per hundredweight during each month shall be as set forth in the table in this

paragraph:" and change the words "Class I price" in the heading of the table to the words "Class I-A price."

4. Amend subparagraph (a) (3) to read: "(3) For Class I-B milk the price shall be the Class I price set forth in the order regulating the handling of milk in the area on which the classification is based, subject to the butterfat and transportation differentials set forth in such order."
5. Amend subparagraph (a) (4) to read: "(4) For Class I-C milk the price shall be the uniform price computed by the market administrator pursuant to Sec. 927.7(b) plus 20 cents per hundredweight."
6. Amend subparagraph (a) (6) to read: "(6) For Class II-B milk the price during March through July shall be 30 cents less than the Class II-A price and for each other month shall be 25 cents less than the Class II-A price: *Provided*, That in no event shall the Class II-B price be lower than the Class II-C price or lower than the Class II-D price minus 5.5 cents."
7. In subparagraph (a) (14) change the words "Class I" to "Class I-A" and change the reference from "927.3(b) (11)" to "927.4(c) (13)."
8. Amend paragraph (b) to read:
 "(b) *Butterfat differentials*. The minimum price for Classes I-A and I-C milk shall be plus or minus 4 cents for each one-tenth of 1 percent of butterfat therein above or below 3.5 percent. The minimum price for Class IV-B milk shall be plus or minus, for each one-tenth of 1 percent of butterfat therein above or below 3.5 percent, an amount equal to the price set forth in subparagraph (13) of paragraph (a) of this section, divided by 9.45 and multiplied by 0.23. The minimum price for each of the other classes, except Classes I-B, V-A, and V-B, shall be plus or minus, for each one-tenth of 1 percent of butterfat therein above or below 3.5 percent, an amount equal to the respective prices set forth in paragraph (a) of this section, divided by 35."
9. Amend paragraph (c) by changing the heading in Column B of the table contained therein from "Classes I and V-A" to "Classes I-A, I-C, and V-A."

VI. Amend Sec. 927.5 as follows:

1. Change the section number from "927.5" to "927.6" and amend paragraph (a) thereof to read:
 "(a) *Monthly reports*. On or before the 10th day of each month, each handler shall report to the market administrator, for the preceding month, in the manner and on forms prescribed by the market administrator, with respect to milk or milk products received at each of his pool plants, and at each of his plants where milk or milk products subject to payments under Sec. 927.8(e) were handled, the following:

“(1) The total quantity of milk and of each milk product, with the average butterfat content thereof, received from dairy farmers, from other plants, from such handler’s own farm, from other handlers, and from other sources;

“(2) The total quantity of milk and of each milk product moved out of, or on hand at, such plant, the average butterfat content thereof, and the destination of any milk or milk product the classification of which wholly or partially depends upon its destination, moved out of such plant;

“(3) The disposition of milk or milk products at each other plant at which the disposition of any milk or milk product is claimed as the basis of classification, such disposition to be covered by a signed statement of the plant operator if such other plant is not a pool plant;

“(4) The computation pursuant to Sec. 927.7(a) of such handler’s net pool obligation; and

“(5) The computation of the amount of any payments pursuant to Sec. 927.8(e).”

2. Change the section reference number in paragraph (b) (i) (iv) from “927.7” to “927.8.”
3. Change paragraph “(c)” to “d” and in subparagraph (3) thereof change the section reference number from “927.7” to “927.8” and in subparagraph (4) change the section references from “927.7(d), (e), and (f)” to “927.8(d) and (f).”
4. Add a new paragraph (c) to read:

“(c) *Other reports.* At such time as the market administrator may request, each handler shall report to the market administrator in the manner and on forms prescribed by the market administrator:

“(1) The total quantity of milk and of each milk product received at his non-pool plants, with the average butterfat content thereof, from dairy farmers, from other plants, from such handler’s own farm, from other handlers, and from other sources;

“(2) The total quantity of milk and of each milk product moved out of, or on hand at, his non-pool plants, the average butterfat content thereof, and the destination of any milk or milk product moved out of such plants;

“(3) Information concerning land, building, surroundings, facilities, and equipment at any of his plants;

“(4) The current receipts and utilization of milk at each of his pool plants; and

“(5) Such other information as may be necessary for the administration of this order.”

VII. Amend Sec. 927.6 as follows:

1. Change the section number from “927.6” to “927.7.”
2. Delete paragraph (a) from the beginning through (a) (5) and add in lieu thereof the following:

“Sec. 927.7 *Determination of uniform price.* The uniform price

shall be computed in accordance with the provisions set forth in this section. Milk received from farms in Nassau or Suffolk Counties, New York, which farms are not approved for sale of milk in New York City, or received from the handler's own farm shall not be included in this computation, and such milk shall be deemed to be excluded by the phrase, "milk received from producers" as such phrase is used in (a) and (b) of this section, in (d) and (g) of section 927.8, and in section 927.9.

"(a) *Net pool obligation of handlers.* (1) Determine the classification pursuant to Sec. 927.4 of milk received from producers at each pool plant;

"(2) Subject to adjustment for appropriate differentials pursuant to Sec. 927.5(b) and (c), multiply the Class I-C milk by 20 cents per hundredweight, multiply the remaining milk or skim milk, as the case may be, in each class by the class price and add together the resulting values;"

3. Change the number of subparagraph (a) "(6)" to "(3)" and change the section reference number therein from "927.7(c)" to "927.8(c)."
4. Change the number of subparagraph (a) "(7)" to "(4)" and change the section reference number therein from "927.4(c) (1)" to "927.5(c) (1)."
5. Change the number of subparagraphs (a) "(8)" and "(9)" to "(5)" and "(6)," respectively.
6. Change the first section reference in paragraph (b) from "927.7(g)" to "927.8(g)."
7. Amend paragraph (b) (2) to read: "(2) Subtract the total of payments required to be made for such month by Sec. 927.8(d);"
8. Add a new subparagraph (b) (3) to read: "(3) Add the total payments required to be made by handlers for such month pursuant to Sec. 927.8(e); and."
9. Change the number of subparagraphs (b) "(3)" and "(4)" to "(4)" and "(5)," respectively.
10. Change the number of subparagraph (b) "(5)" to "(6)" and amend to read: "(6) Subtract the Class I-C milk of all handlers whose reports are included in this computation from the total milk received from producers by all such handlers; and."
11. Change the number of subparagraph (b) "(6)" to "(7)" and change the references "(4)" and "(5)" therein to "(5)" and "(6)," respectively.

VIII. Amend Sec. 927.7 as follows:

1. Change the section number from "927.7" to "927.8."
2. Change the references in subparagraph (b) (1) from "927.4 (c) (1)" to "927.5(c) (1)."

3. Change the reference in subparagraph (b) (2) from "927.6(a) (8)" to "927.7(a) (5)."
4. Amend paragraph (c) to read:
 "(c) *Butterfat differential.* The uniform price shall be plus or minus, as the case may be, for each one-tenth of 1 percent above or below 3.5 percent of average butterfat content of milk delivered by any producer during any month, an amount equivalent to the average of the butterfat differentials determined pursuant to Sec. 927.5(b), for each class, except Class I-B, weighted by the pounds of butterfat in the milk in each such class used in the computation of the uniform price for the preceding month. Such differential shall be computed to the nearest even tenth of a cent."
5. Add a new paragraph (e) to read:
 "(e) *Payments for milk or milk products from other than producer sources.* (1) Payment shall be made by handlers to producers through the producer-settlement fund for milk, cultured or flavored milk drinks, cream, or skim milk, which milk products meet each of the following provisions: (i) It was derived from milk received at some plant from dairy farmers who are not producers; (ii) It was received at a plant in, or delivered to a purchaser in the marketing area, or was received at a pool plant outside the marketing area and assigned either to shipments to the marketing area of milk, cultured or flavored milk drinks, cream, or skim milk, or to plant loss; and (iii) The milk or milk equivalent of the butterfat is classified as Class I-A or Class II-A, or the skim milk is classified as Class V-A.
 "(2) The amount of payment for the products set forth in (1) of this paragraph shall be as follows: (i) If the milk, or the milk equivalent of the butterfat, or the skim milk is classified and paid for under another order issued pursuant to the Act, the amount of payment shall be any plus amount obtained by subtracting the value of the milk, the milk equivalent of the butterfat, or the skim milk at the class price or prices under such other order from the value computed in accordance with the classification and pricing set forth in this order: (ii) If the milk or milk product is derived from milk the handling of which is not regulated by another order issued pursuant to the Act, the amount of payment shall be as follows: for milk, or for cultured or flavored milk drinks containing 3.0 percent butterfat or more, the difference between the value of such milk or cultured or flavored milk drinks at the Class I-A price in the 201-210 mile zone and the value computed at the Class IV-A and Class V-B prices; for cream, or for cultured or flavored milk drinks containing less than 3.0 percent butterfat, the difference between the value of the milk equivalent of such cream or milk drinks at the Class II-A price in the 201-210 mile zone and at the Class IV-A price (milk equivalent in each case to be computed on the basis of milk containing 3.5

percent butterfat); and for skim milk (either as skim milk or in cultured or flavored milk drinks), the difference between the value computed at the Class V-A price in the 201-210 mile zone and the Class V-B price; (iii) In the event that the source of such milk or milk product is not revealed, the amount of payment shall be the full value at the class prices in the 201-210 mile zone.

“(3) Payment for any milk or milk product pursuant to this paragraph shall be made only once and shall be made by the appropriate handler as set forth in the following provisions:

(i) By the handler first receiving the milk or milk product at a pool plant outside the marketing area; (ii) By the handler operating the plant where the milk or milk product is first received in the marketing area if the milk or milk product is not received at a pool plant outside the marketing area; or (iii) By the handler operating the plant from which the milk or milk product was delivered to a purchaser in the marketing area if such milk or milk product is neither received at a pool plant outside the marketing area nor at a plant in the marketing area.

“(4) Payment pursuant to this paragraph shall be due at the time of filing the reports pursuant to Sec. 927.6(a).”

6. Change the reference in paragraph (f) from “927.3(b)(3)” to “927.4(c)(5).”
7. Amend paragraph (g) by changing in the first sentence the first series of paragraph references therein from “(h) and (j)” to “(e), (h), and (j)” and the second series of paragraph references therein from “(e), (f), and (j)” to “(f) and (j)”, and by changing in the second sentence the words “Class I milk priced pursuant to Sec. 927.4(a)(4)” to the words “Class I-C milk.”

IX. Amend Sec. 927.8 as follows:

1. Change the section number from “927.8” to “927.9” and change the classes listed therein from “I, II-A, and II-B,” to “I-A, I-B, I-C, II-A, and II-B.”

X. Amend Sec. 927.9 as follows:

1. Change the section number from “927.9” to “927.11.”

XI. Add a new Sec. 927.12 as follows:

“The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions hereof.”

This report filed at Washington, D. C., this 31st day of January, 1945.

H. E. REED

Acting Director of Marketing Services